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COURSE SELECTION, STUDENT CHARACTERISTICS AND BAR EXAMINATION PERFORMANCE: THE INDIANA UNIVERSITY LAW SCHOOL EXPERIENCE

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INTRODUCTION: RATIONALE FOR RULE 13

Failure rates of 20% and 25% respectively on the March and July 1973 Indiana bar examinations, figures that were considered quite high compared to past Indiana experience by both law students and lawyers, prompted considerable discussion of bar examination success rates and the validity of such testing. In May 1973, Norman F. Arterburn, at that time Chief Justice of the Indiana Supreme Court, first voiced a concern shared by a number of lawyers¹ that the higher than anticipated failure rate was attributable to inappropriate course selection.

"We find that some law schools and we are not directing our remarks to those alone in Indiana, do not require for graduation certain basic subjects such as Evidence, Contracts or Constitutional Law to mention but a few. With such lack of direction and control over the course of study, students tend to take fringe courses related so sociology and philosophy of the law which may be desirable, but should not displace the fundamentals of the law. I close this subject with a statement that this Court through the Board of

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¹ "The recent high ratio of failures among law graduates taking the Indiana bar examination has created real concern among the lawyers of the State of Indiana. Why, they ask, when law school admission has become restricted to the persons with top scholastic ability, when law schools are striving for greater excellence in their graduates and when they are examined by 10 highly competent and dedicated members of our Bar, should there be this high ratio of failure? Many loyal members of our association have orally and in writing been asking these questions of your officers. As you might well guess many also have opinions as to the cause for the problems. But, as would be expected of lawyers, there are divergent views as to the cause or causes and as usual there it utter lack of unanimity." Gordon, A Discussion of Bar Admissions, 18 *Res Gestae* 5 (February 1974).

Law Examiners is seriously considering a rule requiring the taking and passing of certain basic fundamental courses in law before the applicant can take a Bar examination, regardless of the fact that they have graduated from a law school.”²

Less than two years after this expression of concern the Indiana Supreme Court adopted Rule 13 which conditions eligibility to take the Indiana bar examination after January 1, 1977 upon successful completion of 54 semester hours of instruction in 14 subject matter areas: Conflict of Laws, Constitutional and Administrative Law, Contracts and Equity, Criminal Law and Procedure, Evidence, Federal Taxation, Legal Bibliography, Legal Ethics, Negotiable Instruments, Sales and Secured Transactions, Partnership, Agency and Corporations, Pleading and Practice, Real and Personal Property, Torts, and Wills, Trusts and Future Interests. Prior to adoption of Rule 13, applicants had been free to take the bar examination without constraints of course requirements.³

When Rule 13 was adopted, the President of the State Board of Law Examiners, Maurice G. Robinson, offered a rationale for the Rule.

“The Court, by defining the minimum contemporary anatomy of the law has now chartered a program which will give every law student a better opportunity to realize the ultimate goal of admission to the Bar of this state with less frustration over possible failure and consequent loss of economic opportunity.

“These courses are basic and fundamental things a lawyer must know. It is the purpose of the amendment to the Admission and Discipline Rule to assure against another instance of the high ratio of failures among law graduates taking the Indiana examination.”⁴

Simply stated, Mr. Robinson was suggesting that appropriate course selection (as defined in Rule 13) would improve performance on the

² Speech at Bar Admission Ceremonies, Indianapolis, Indiana, May 20, 1973.

The Committee on Qualifications to Practice Before United States Courts in the Second Circuit, chaired by Mr. Robert L. Clare, Jr. of New York City, is considering the need for a rule setting special requirements for admission to practice in that Circuit. In a paper prepared for the American Bar Association's Special Committee on Specialization Mr. Clare expressed the same skepticism concerning course selection by contemporary law students:

“With the present day trend of allowing students to pick their own way through the courses, law firms soon learn to beware of students who have avoided bread and butter courses for the more esoteric subjects such as the lives of the Chief Justices of the Supreme Court.”

³ For an excellent discussion of Rule 13 see: Beytagh, “Prescribed Courses as Prerequisites for Taking Bar Examinations: Indiana's Experiment in Controlling Legal Education,” 26 *J.L.Ed.* 449 (1974).

⁴ 18 *Res Gestae* 13 (January 1974).

Indiana bar examination. An analysis of the performance of 272 Indiana University Law School graduates who took the Indiana bar examination between July 1973 and July 1974 was undertaken to test this stated rationale for Rule 13.

Analysis

Graduates were divided into two groups—those taking the July 1973 bar examination and those taking the examination in February or July, 1974. Statistical analysis of each group provides an empirical assessment of the impact of elective bar-related courses⁵ on the probability of passing the bar examination. If passing the bar is actually dependent on taking the courses required by Rule 13, students who had taken these courses should, net of other characteristics also related to passing the examination, have been more likely to succeed than those not taking such courses.⁶

Furthermore, the division of students into two groups provides a more powerful test of the hypothesis that taking or not taking certain courses is an important determinant of examination success. Failure of the same characteristic to be related in similar fashion to passing the bar in both groups would indicate that it is not a true causal factor.

Preliminary analysis of a number of plausible characteristics⁷ of graduates taking the July 1973 bar examination reduced the number of

⁵ For this study we analyzed all courses taken by students except those which had been required of all students by the school. Bar-related courses examined in Tables I and II are those whose content paralleled that of the subject areas asked for by the bar examiners on the three examinations. Those courses were: Criminal Process I and II, Remedies, Restitution, Wills and Administration, Family Law, Trusts, Negotiable Instruments, Commercial Transactions, Advanced Constitutional Law, Agency, Future Interests, Introduction to Income Tax, Gift and Estate Tax, Labor Law, Corporations, Evidence, Administrative Law, and Conflict of Laws. Not all of these areas were covered in each exam. For example, Family Law and Labor Law were not subjects covered in the 1974 examinations. Several areas now required by Rule 13 were then required courses (Contracts, Torts, Introduction to Constitutional Law, Procedure, Property, and Criminal Law), thus all candidates had taken them and therefore they are not studied here. The data for all courses is available to interested scholars.

⁶ Professor Beytagh suggests, "If history shows a substantial improvement in the percentage of those passing the exam, then it will have vindicated the bar examiners to some extent. Of course, this is a complex and potentially deceptive matter also, since the examiners are in control of the percentage who pass the exam and are admitted to practice." Beytagh, *supra* n. 3 at 460-461. We would state the qualification more strongly. The hypothesis that Rule 13 will lead to better bar examination performance can never be proven because we have not eliminated all other potential success factors. However, the falsity of the hypothesis can be examined as we do in this paper by comparing the performance on the bar examination of two groups of students: Those who did and those who did not elect certain courses. On and after January 1, 1977, it will no longer be possible to verify statistically the hypothesis because all candidates will have taken the prescribed courses.

⁷ Age, race, sex, undergraduate cumulative average, receipt of financial aid and enrollment in a bar review course were included in a pilot study. In our sample,

characteristics related to success in passing the bar examination to (1) law school cumulative grade point average; (2) number of seminars; (3) marital status; (4) LSAT scores; and (5) number of bar-related courses.

Group I.

These five independent variables had statistically significant impacts on the probability that a graduate would pass or fail the July 1973 Indiana bar examination and Table I summarizes the data for the 123 students in that group.

TABLE I

Table I. Unadjusted and adjusted pass rate for 123 Indiana Law School graduates taking the Indiana Bar Exam, July 1973

Variable Name	Category Values	Number of Students	Not Adjusted	Adjusted
Law Cumulative grade average	2.8+	53	90.9%	88.2%
	2.4-2.7	42	71.7	74.4
	2.0-2.3	28	38.4	37.3
Number of Bar Courses taken	11+	49	74.4	73.8
	10	36	76.9	80.1
	9	21	40.0	47.9
	8 or less	17	54.5	52.5
Number of Seminars taken	2+	33	81.8	80.2
	0-1	90	67.7	67.0
Marital Status	Single	86	67.4	67.0
	Married	37	81.0	82.0
LSAT	619+	41	84.2	84.4
	571-615	38	58.5	59.6
	570 or less	44	72.7	71.5
Total students = 123				
Grand mean = 71.5%				

the number of women, members of minority groups and students not enrolling in a bar review course were so small that no valid statistical inferences could be drawn. Small correlations between undergraduate grades, receipt of financial aid and success on the bar examination were observed in the July 1973 group, but were not observed in the February-July 1974 group.

The various categories for each of the five independent variables and the number of graduates in each category are displayed in two columns of Table I. The number of students in each category appears in the middle column. The fourth column shows the percentage of students in each category passing the examination.

The overall pass rate was 71.5%. Deviations from this overall pass rate indicate whether or not having many or few bar-related courses, being married or single, having a high or low cumulative grade point average, etc. was a likely determinant of the chance of passing. The pass rates in column four are the rates observed before adjustment for other characteristics of graduates, factors which might also affect the probability of passing an examination. It is important to control for contaminating influences before concluding that, for example, marital status is a genuine predictor. If married students had higher cumulative grade point averages (a good predictor of exam success in Group I) than single students, the unadjusted pass rate indicating higher pass rates for married graduates could vanish after statistical control for this possible difference.

The adjusted pass rates displayed in the right-hand column of Table I show differences in the pass rates among graduates under multivariate statistical controls.⁸ Any difference between the unadjusted and adjusted pass rate indicates the extent to which the unadjusted rate was inflated (or deflated) because graduates with a given characteristic also had other attributes disposing them toward success or failure on the exam. For example, column four in the top panel of Table I shows that 90.9% of students with a cumulative grade point average of 2.8 or higher passed the examination, while only 38.4% of those with an average of 2.0 to 2.3 were successful. The differential indicates a powerful effect of academic performance in law school.⁹ Furthermore, this differential is affected little when the other characteristics of graduates with high or low grades are considered, i. e., the adjusted pass rate in column five shows little change from the unadjusted rate in column four.

Analysis of the adjusted pass rate data in Table I suggests there is a powerful relationship between academic performance in law school and success on the bar examination. There is an irregular relationship

⁸ The method employed in this study is multivariate classification analysis, a multiple regression method which assumes additivity, but allows curvilinearity, and is appropriate to the types of measures used in this study.

⁹ One other study concludes there is a positive relationship between academic achievement in law school and bar exam success: Note: "The Relationship of Law School Grades to Passing the Bar Exam: Empirical Evidence," 2 *U.Toledo L.Rev.* 426 (1974).

between LSAT scores and bar examination success.¹⁰ A sharp distinction can be noted in the performance of students taking ten or more bar-related courses when compared with those taking a lesser number. However, we can see that students who took only ten courses were slightly more likely to pass than those who took eleven or more such courses; and those who took eight or fewer courses were more likely to pass than those who took nine bar-related courses. No definite conclusions can be drawn for this group as to the effect of taking bar-related courses on examination performance.

Married students demonstrated measurably better performance than single students, and students electing two or more seminars had a higher pass rate than students electing only one seminar.¹¹

Any or all of these conclusions could be spurious due to small sample size random fluctuations across bar-examinations in type of questions asked, grading procedures of the examiners, or other idiosyncratic factors. To assess the stability of the presumed impact of the number of bar-related courses and other characteristics on passing the examination, we replicated the above analysis using the 149 Indiana University Law School graduates who sat for the February and July 1974 bar examinations. The results of this study, summarized in Table II, confirm some, but not all, of the findings developed in the study of the first group.

Group II.

The pass rate of this combined group is 84.5%—well above the rate in the first group, and the results appear in Table II.

The relationship between the law school cumulative grade average and the bar examination pass rate continues to be strong. All of the 66 graduates with a 2.8 or higher grade average passed and 65% of those in the lowest category (compared to only 38% of comparable candidates in the first group) also passed. Adjusted pass rates are little changed. A positive effect is again seen among married students and among those who took two or more seminars. The LSAT figures, on the other hand, do not show a pattern consistent with that found in the first group. More importantly, the presumed advantage in taking ten or more bar-related courses is not present in this group of candidates. The

¹⁰ Graduates with high or low LSAT scores have higher pass rates than graduates with middle range LSAT scores. This unexpected result is not replicated in our second analysis (Table II) and may be due to small sample size or chance factors.

¹¹ All students were required to take one seminar and prepare one substantial research paper. Normally students satisfy both requirements by enrolling in a research seminar. A few seminars are offered as non-research seminars. Students enrolled in such seminars must take a second seminar in the research category or complete an independent research project. We did not attempt to distinguish between research and non-research seminars.

TABLE II

Table II. Unadjusted and adjusted pass rates for 149 Indiana Law School graduates taking the Indiana Bar Exams, February and July 1974

Variable Name	Category Values	Number of Students	Not Adjusted	Adjusted
Law Cumulative grade average	2.8+	66	100.0%	98.0%
	2.4-2.7	47	85.0	86.8
	2.0-2.3	36	65.2	65.8
Number of Bar Courses taken	11+	44	90.9	88.4
	10	42	80.9	81.4
	9	22	81.8	78.9
	8 or under	41	82.9	86.6
Number of Seminars taken	2+	28	92.8	92.9
	0-1	121	82.6	82.6
Marital Status	Single	92	79.3	80.0
	Married	57	92.9	91.7
LSAT	619+	54	92.5	85.8
	571-615	46	82.5	86.7
	570 or less	49	77.5	80.8
Total students = 149				
Grand mean = 84.5				

group taking eleven or more courses had the highest pass rate, but the next most successful group elected the fewest number of bar-related courses. Furthermore, all the adjusted pass rates among the four categories were clustered closely around the overall passing average of 84.5%.

The information presented in Tables I and II suggests that the most important predictor of success or failure on the bar examination is the level of academic achievement in law school. Marital status and the number of seminars elected were also consistent predictors. LSAT scores and number of bar-related courses did not consistently predict success.

We found that virtually all students with grade point averages above 2.7 passed, regardless of course selection.¹² Therefore, we conclude that

¹² We found that of students with cumulative averages at 2.7 or higher, 57.5% in Group I and 59.7% in Group II enrolled in the bar-related courses listed in Table III. For students with lower cumulative averages, 59.0% in Group I and 55.2% of Group II were enrolled in the Table III courses.

this group (about 40% of all graduates) cannot possibly benefit from Rule 13. We now ask whether it is likely that students with lower academic performance will benefit from requirements that they take bar-related courses. The pass rate of students with average grades below 2.8 who elected Rule 13 courses was compared with the pass rate of students with similar grades who did not elect such courses. The results of this analysis appear in Table III.¹³

The name of each course is in the left-hand column. For each course we provide two sets of statistics. Group I was composed of graduates taking the July 1973 bar examination and Group II represents those who sought admission in February or July of 1974. For each of these groups column one on the far left shows the percentage taking the course, column two displays the pass rate for the electing group and column three reports the pass rate for those not taking the course. The gamma coefficients in column four measure the relationship between taking or not taking the course and passing or not passing the bar. A positive gamma indicates that taking the course was positively related to passing the bar; a negative gamma indicates that taking the course was negatively related to one's chances of passing the bar. While gamma measures the direction of the relationship, it is not a fully adequate measure because small sample size and the distribution of graduates among the categories of taking or not taking a given course can yield unreliable results. For this reason a significance test¹⁴ is reported in the far right-hand column. If the association between taking a course and passing the bar exam is weak, the significance level will be greater than .05.¹⁵

The supporters of Rule 13 argue that students fail the bar exam because they have not taken certain courses. Perhaps the course most

¹³ The courses listed in Table III are those with subject content most closely paralleling areas listed in Rule 13. There are other courses in the current curriculum which focus on specific sub-subjects in the overall area, for example, Civil Rights would be a sub-subject of Constitutional Law, Corporation Taxation would be a sub-subject of both Federal Taxation and Corporations. In addition, the July, 1973 bar examination list of subject areas to be covered included Family Law. In our analysis of all courses taken by the students in both groups we found no relationship (as was the cases for all courses) between taking Family Law and passing the bar.

¹⁴ Chi-square tests were used.

¹⁵ A significance level of .05 means that the reported correlation between passing the bar examination and a given selected course could be expected to appear in only 5 of every 100 samples on the basis of chance alone. It is only when the level of significance is at or below .05 that we have concluded that course selection might be important. Because a relationship of .05 will occur in about 5 of every 100 samples, we would expect to find about one test at the level of .05 or below and about two at or below the level of .10 among the 30 tests (15 courses X 2 groups) reported in Table III. There were two courses at or below .10: Criminal Process II (Group I) and Gift and Estate Tax (Group I).

TABLE III

Table III. Relationships between electing or not electing Bar-related Courses and Bar pass rates: Indiana University School of Law graduates with cumulative grade point averages below 2.8

Course	Group *	Percent Electing	Electing Pass Rate	Non-electing Pass Rate	Gamma	Significance
Evidence	I	83.3%	52.0%	40.0%	.24	.73
	II	91.7	65.2	100.0	-1.00	.20
Criminal Process I	I	55.0	45.5	55.6	-.20	.60
	II	72.2	71.2	60.0	.24	.53
Criminal Process II	I	43.3	34.6	61.8	-.51	.07
	II	51.4	70.3	65.7	.10	.87
Remedies	I	41.7	60.0	42.9	.33	.29
	II	20.8	73.3	55.7	.16	.86
Wills and Administration	I	73.3	54.5	37.5	.33	.38
	II	55.6	70.0	65.6	.10	.89
Restitution	I	15.0	55.6	49.0	.13	1.00
	II	12.5	66.7	68.3	-.04	.77
Trusts	I	76.7	56.5	28.6	.53	.13
	II	68.1	63.3	78.3	-.35	.32
Commercial Transactions	I	83.3	50.0	50.0	.00	.73
	II	87.5	69.8	55.6	.30	.63
Agency	I	30.0	55.6	47.6	.16	.78
	II	23.6	70.6	67.3	.08	.97
Advanced Constitutional Law	I	75.0	53.3	40.0	.26	.55
	II	36.1	80.8	60.9	.46	.14
Future Interests	I	11.7	28.6	52.8	-.47	.42
	II	23.6	76.5	65.5	.26	.58
Income Tax	I	86.7	50.0	50.0	.00	.70
	II	83.3	66.7	75.0	-.20	.82
Gift and Estate Tax	I	56.7	64.7	30.8	.61	.02
	II	50.0	72.2	63.9	.19	.61
Corporations	I	85.0	54.9	27.2	.62	.15
	II	80.6	67.2	71.4	-.10	.99
Conflicts	I	68.3	51.2	47.4	.08	1.00
	II	70.8	68.6	66.7	.04	.91

* Group I are graduates with cumulative grade averages under 2.8 taking the July 1973 exam; Group II are graduates with cumulative averages under 2.8 taking the February or July 1974 exams.

often mentioned in this connection is Evidence. If the premise underlying Rule 13 is correct, one would expect to see a positive gamma for this and other Rule 13 courses at a level of significance of .05 or less. Comparison of the pass rate for graduates taking or not taking Evidence are shown in the first two rows of Table III. In Group I, 52% of those taking, compared to 40% of those not taking Evidence passed the bar. In this group gamma is positive but not significant. In Group II, 65% of those taking and 100% of those not taking Evidence passed the bar. This negative relationship is not significant.

Among Group I graduates only Criminal Process II and Gift and Estate Tax have a level of significance of .10 or less. Enrollment in Gift and Estate Tax appeared to help students while enrollment in Criminal Process II appeared to be counterproductive. But when the same analysis was repeated for students taking the February and July 1974 bar examinations (Group II) the results of the first study were not sustained. The lack of consistent positive and significant relationships between taking or not taking bar-related courses and bar examination pass rates suggests that requiring these courses will not increase the likelihood that law school graduates, at risk of failure, will pass rather than fail the exam.

DISCUSSION

There are a number of practical problems with Rule 13. Students may be forced to make unreasonably early decisions about where they wish to practice law. Indiana firms may find that hiring non-Hoosiers has suddenly become much more difficult. If other states adopt slightly different versions of Rule 13 the balkanization of the practice of law will be upon us. Constructive change in legal education will be inhibited. We join the many others who are concerned that Rule 13, contrary to the intent of its sponsors, may have a damaging impact upon legal education and the practice of law.¹⁶

Our analysis of the performance of Indiana University graduates on recent bar examinations found no support for the rationale behind Rule 13. No course or group of courses had any consistent relationship to success or failure on the bar exam. Thus we do not have a situation in which one is forced to balance the gains to be achieved through compliance with Rule 13 against the cost of the Rule. Our study shows that there was no gain for the 1973-74 graduates and strongly suggests there will be no gain for future graduates. Most of the facts used in our analysis were given to the Indiana State Board of Law Examiners by

¹⁶ Beytagh, *supra* n. 3 at 455-461 reviews a number of problems created by Rule 13.

the applicant prior to taking the bar examination; the rest could have been obtained with little effort. In retrospect, it seems very unfortunate that the Board of Examiners did not do what we have done. With the authority to control the admission to practice goes the responsibility of moving cautiously and after full consideration of all the relevant evidence. We believe that the Examiners and the Indiana Supreme Court, confronted with such analysis prior to adoption of Rule 13, could only have decided that the Rule was not appropriate.

The current concern we express is not directed solely to the Indiana situation. Rule 13 has received national attention. We hope that other jurisdictions which may be considering adoption of similar Rules will give careful attention to our study and conclude that the case for additional restrictions on admission to practice is not convincing.